

EXHIBIT 11

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GORDON HEMPTON,

Plaintiff,

v.

POND5, INC., A DELAWARE
CORPORATION; AND POND5 USER
CKENNEDY342, A CORPORATION OR
INDIVIDUAL OF TYPE UNKNOWN,

Defendants.

No.: 3:15-cv-05696-RBL

PLAINTIFF'S FIRST
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS
**AND DEFENDANT POND5'S FIRST
SUPPLEMENTAL OBJECTIONS,
ANSWERS AND RESPONSES
THERE TO**

COMES NOW Defendant Pond5, Inc. ("Pond5") and, pursuant to the Federal Rules of Civil Procedure, provides the following supplemental objections, answers, and responses to Plaintiff's First Interrogatories and Requests for Production.

GENERAL OBJECTIONS

Pond5 hereby incorporates the following General Objections into each and every individual response contained herein and into any future amendment, supplement or modification to these responses, as well as any future discovery request of the plaintiff.

1. Pond5's responses and objections are based upon information and belief after a reasonably diligent search of all available records relating to the matters referred to in the Complaint in this lawsuit. Pond5 has yet to complete its investigation and discovery of the

POND5'S FIRST SUPPLEMENTAL ANSWERS AND RESPONSES
TO PLAINTIFF'S FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION - I
(3:15-cv-05696 RBL)

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of his works.” To the extent that this refers to contact with its customers, Pond5 has not contacted any of its customers with respect to the allegations made by Mr. Hempton. Pond5 is unaware of any legal obligation to do so. With respect to Pond5’s response to Mr. Hempton’s allegations, upon being notified, Pond5 immediately removed all content uploaded by ckennedy342 and blacklisted his account. Pond5 subsequently conducted a thorough investigation of ckennedy342, sharing the results of its investigation with plaintiff. Pond5 also had numerous communications with plaintiff and his attorney.

INTERROGATORY NO. 2: Identify all Contributors who uploaded Plaintiff’s copyrighted works of authorship. Identify and describe with particularity all efforts to recall Mr. Hempton’s material or otherwise respond to Mr. Hempton’s assertion that he did not authorize the use of his works.

ANSWER: Pond5 objects to Interrogatory No. 2 because it is overly broad, unduly burdensome, seeks information not relevant to this lawsuit, and is not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Pond5 objects because Interrogatory No. 2 is compound. Pond5 further objects because portions of Interrogatory No. 2 are duplicative of Interrogatory No. 1. Finally, Pond5 objects to the phrase “works of authorship” as the phrase is vague and undefined. Without waiving objections, see objections and answer to Interrogatory No. 1. Pond5 does not know whether contributor ckennedy342 uploaded plaintiff’s works and is aware of no other Contributor that uploaded his works.

INTERROGATORY NO. 3: Identify and describe with particularity all methods in place at Pond5 from January 1, 2012 to the present to detect against the uploading, downloading, display, copying or distribution of works of authorship without authorization from the copyright owner or other party with authority to license the content.

1 **ANSWER:** Pond5 objects to Interrogatory No. 3 because it is overly broad, unduly
 2 burdensome, seeks information not relevant to this lawsuit, and is not reasonably calculated to
 3 lead to the discovery of admissible evidence. It is overly broad and unduly burdensome
 4 because it is not limited to any particular type of content and the requested time frame
 5 significantly exceeds the dates in which user ckennedy342 posted content. Additionally, Pond5
 6 objects because Interrogatory No. 3 seeks information that is confidential and proprietary.

7 Without waiving objections, and limiting this answer to current methods to detect
 8 improper uploading, downloading, display, copying or distribution of sound effects, Pond5
 9 requires that all contributors and customers comply with its terms of use, which includes
 10 various provisions prohibiting copyright infringement and other illegal acts. Additionally,
 11 contributors are required to agree to the terms of the Pond5 Contributor Agreement. The
 12 Contributor Agreement, among other terms, includes provisions requiring the contributor to
 13 have full legal right to post the content to the Pond5 website and license it to customers.
 14 Moreover, prior to downloading content from the Pond5 website, a customer must agree to the
 15 terms of the Pond5 Content License Agreement. The Content License Agreement includes
 16 terms prohibiting copyright violations and other improper uses.

17 Besides legal agreements, Pond5 takes other steps that are intended to discourage
 18 infringement. For example, Pond5's Website emphasizes the importance of posting high-
 19 quality audio, video and images. Additionally, all media are subject to an approval process,
 20 which is repeatedly referred to on the Website. These statements are primarily intended to
 21 encourage Contributors to limit their uploads to only the highest quality media so that
 22 Customers, in searching media, are not overwhelmed with low-quality content. A second
 23 purpose for the inclusion of statements emphasizing quality and including an "approval"
 24 process is to serve as a warning for would-be infringers not to post their content on Pond5.com.

25 Pond5 utilizes watermarking and other methods to mark all available Content that is
 26 posted on the Website. For sound effects, every clip is embedded with a recording that states

1 “Pond5.com” at the beginning of the clip. The recording repeats itself approximately every 7.5
2 seconds for however long the clip is. All other Content is embedded with some type of mark to
3 prevent Customers and other visitors to the Website from infringement.

4 The Website also makes numerous references to copyright law. Such references are, at
5 least in part, intended to discourage anyone from utilizing Pond5.com to infringe upon the
6 intellectual property of others.

7 Pond5 also relies upon its network of contributors, customers, and others who access its
8 website to inform it of possible improper uploading, downloading, display, copying or
9 distribution. Upon being notified of a possible improper upload, download, display, copy, or
10 distribution, Pond5 immediately investigates and takes necessary steps to prevent any further
11 improper use.

12 In addition to the foregoing, Pond5 has software that it developed that serves as a
13 duplication detection system. This software identifies identical duplicate tracks that are
14 uploaded to the Pond5 website by different user accounts. If a duplicate track is identified with
15 a different user account, Pond5 investigates the circumstances and takes appropriate measures
16 to prevent the improper uploading, downloading, display, copying or distribution. The
17 duplication detection system has been in place for several years and its effectiveness increases
18 as the Pond5 library continues to grow. Every sound effect that is uploaded to Pond5’s website
19 is evaluated via the duplication detection system.

20 Since mid-2015, Pond5 has required all new contributors of sound effects to submit a
21 copy of a valid photographic identification. Among other purposes, the photo identification
22 requirement is intended to discourage the uploading of illegal or improper content.
23 Additionally, since November 2015, Pond5 began conducting a verification analysis for
24 contributors of sound effects. The verification process involves an internet search to verify that
25 the contributor has a legitimate web presence, such as an official website, a LinkedIn page, or a
26 Facebook page.

Pond5 utilizes Automatic Content Recognition from Audible Magic to detect possible illegal or improper posting of music content. Additionally, on a selective basis, Pond5 utilizes consumer tools such as Shazam for music content. However, neither Audible Magic nor consumer tools such as Shazam are effective for sound effects content. For sound effects, there is no software or other mechanical, digital or automated system that Pond5 could reasonably utilize in order to compare content that is uploaded to its website to content that is available elsewhere.

Pond5 is a marketplace that is crowd-sourced. The marketplace involves thousands of Contributors uploading, on an annual basis, millions of items of Content and thousands of Customers purchasing licenses to that Content. Pond's primary role is to host the marketplace, provide a mechanism through which Contributors can license their Content to Customers, and provide structure so that Content can be easily located and transactions can be completed with maximum ease. In this role, while Pond5 utilizes numerous mechanisms to prevent, identify, and investigate infringement, Pond5's ability to do so is limited. Pond5 cannot prevent a Contributor from uploading stolen items. The prevention of infringement with respect to sound effects is particularly difficult.

INTERROGATORY NO. 5: Identify all Pond5 past or current Contributors who Pond5 has identified as uploading works without authorization from the author of the work. For each such Contributor, identify the date the Contributor became a Pond5 Contributor, the date and means that Pond5 identified that the use of the work was not authorized, the unauthorized works, the owner of the unauthorized work, the IP address(es) used by the Contributor and any Customer(s), the sales or licensing of the works, the revenue from the sale or licensing of works, the payments to Contributors for the works, any personally identifiable information of the Contributor and any Customer(s) and any actions taken by Pond5 to respond to the unauthorized use of the works.